

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

DJ MANUFACTURING CORPORATION	:	
	:	CIVIL NO. 97-1457 JAG
Plaintiff	:	
	:	
v	:	ABOUT: ANTITRUST, DAMAGES
	:	
TEX-SHIELD, INC., et al	:	JURY TRIAL DEMANDED
	:	
Defendants	:	
_____	:	

MOTION FOR EXTENSION OF TIME  
TO FILE NOTICE OF APPEAL

TO THE HONORABLE COURT:

Comes now Plaintiff, DJ Manufacturing Corp. (hereinafter "DJM" or "Plaintiff") and respectfully states and prays:

1. On October 21, 2004, Plaintiff received an Order granting the Motion for Writ of Execution filed by defendants in this case.

2. The Order entered on October 21, 2004, was the first notice of the undersigned regarding the entry of Judgment in this case. Upon receipt of said order, a search was conducted by the undersigned and we have been unable to confirm actual receipt of notice of said Judgment and it certainly did not come to the attention of the undersigned counsel until the notice of the order granting the writ of execution. Marc lamer, Esq., of counsel for the plaintiff in this case, confirmed that he has not received copy

MOTION REQUESTING EXTENSION...  
CIVIL NO. 97-1457 JAG  
Page 2

of said Judgment either (although Mr. Lamer is not counsel of record, courtesy copies of all pleadings filed are sent to him as a matter of course, and the undersigned does copy Mr. Lamer with all documents filed or received in this case and he confirmed not having received copy of said Judgment from the Clerk of the Court or my office).

3. Rule 4 of the Federal Rules of Appellate Procedure states that:

"(A) The district court may extend the time to file a notice of appeal if:

(i)....

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that a party shows excusable neglect or good cause."

4. The appearing party respectfully appeals to the sound discretion of this Honorable Court, and requests that an extension of time to file the Notice of Appeal submitted herewith be granted on the grounds that:

(a) As can be confirmed by the case record, the appearing party has been extremely diligent in all the proceedings in this case since its filing and therefore the reason for not filing the Notice of Appeal sooner is only explainable by the problem experienced with receipt of the notice of judgment. Had notice been effectively

MOTION REQUESTING EXTENSION...  
CIVIL NO. 97-1457 JAG  
Page 3

received by the undersigned, immediate action would have been taken by the filing of the notice of appeal;

(b) It is respectfully submitted that, in the alternative, the foregoing constitutes good cause within the meaning of FRAP 4(A) and DJM moves the Honorable Court to exercise its discretion and extend the time within which to file the notice of appeal in this case;

(c) It is further submitted that Plaintiff has meritorious arguments and defenses to oppose to the Judgment which warrant their consideration by the Court of Appeals, including but not limited to, defenses as to the Honorable Court's jurisdiction regarding the partial and the final judgment entered in this case in connection with the arbitral award in the absence of a counterclaim by defendant. These arguments and defenses warrant that Plaintiff be entitled to an appeal;

(d) Plaintiff has initiated the process with its insurance carrier to obtain a supersedeas bond and we have been advised that the process should be completed within a week; the bond would stay the execution of the Judgment entered and therefore no prejudice will be caused to defendants but, rather, the collection of the judgment

MOTION REQUESTING EXTENSION...  
CIVIL NO. 97-1457 JAG  
Page 4

will be facilitate should it eventually be affirmed;

(e) Further, considering the brief period of time elapsed from the date of entry of the Judgment, that brief delay of approximately two weeks in the filing of the notice of appeal has not unduly delayed the proceedings nor caused any prejudice to the defendants.

5. This request for extension of time is done in good faith, will not cause any undue prejudice to the defendant, and is submitted by the undersigned under the penalty of perjury.

**WHEREFORE**, Plaintiff DJ Manufacturing Corp. respectfully prays from this Honorable Court that this motion be granted, and that the term within to file the Notice of Appeal be considered extended.

**RESPECTFULLY SUBMITTED.**

**IT IS CERTIFIED** that a true copy of the foregoing motion was filed on this same date, via electronic filing, with the USDC, and that copy hereof will be electronically served by the USDC electronic filing system directly upon the parties.

In San Juan, Puerto Rico, this 17<sup>th</sup> day of November, 2004.

**BIRD BIRD & HESTRES, P.S.C.**  
**ATTORNEYS for PLAINTIFF**  
**DJ Manufacturing Corp.**  
**P.O. Box 9024040**  
**San Juan, PR 00902-4040**  
**Telephone: 787-721-0190**  
**Fax: 787-724-5305**  
**e-mail: ehestres@bbh-law.com**

MOTION REQUESTING EXTENSION...  
CIVIL NO. 97-1457 JAG  
Page 5

By: S/EUGENE F. HESTRES  
Eugene F. Hestres  
PR-USDC 121310

OF COUNSEL:

KOSTOS & LAMER, P.C.  
1608 Walnut Street, Suite 1300  
Philadelphia, PA 19103  
(215) 545-0570

K:\60\20\APPEAL-2\Memot-extension-notice.appeal.wpd